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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,973	02/27/2002	David D. Kiefer	210_271	6900
20874	7590	09/29/2004	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/083,973	Applicant(s) KIEFER ET AL. 	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 9-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,763,677 in view of Badalament et al. It would have been obvious to incorporate the gas generator of Badalament et al since this would have provided an effective means of inducing ripeness during transport.
4. Claims 9-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No.

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6,457,402 in view of Badalament et al. It would have been obvious to incorporate the stacked rows of cartons and air plenum chambers of Badalament et al since this would have provided an effective means circulating gases during transport.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al [Pat. No. 6,012,384] in view of Briscoe Jr et al [Pat. No. 6,390,378] and Cantagallo et al [Pat. No. 3,733,849].

Badalament et al teach a mobile container device comprising a pair of plenum chambers extending rearwardly from a mixing chamber (Figure 4, #34 & 40), stacked rows of cartons (Figure 4, #24), vertically stacked fan means (Figure 4, #60), a gas generator (Figure 2, #116), rear doors which could exchange fresh air (column 6, line 45), a return air inlet (Figure 7, #56), and pressure bars (Figure 4, #70). Badalament et al do not recite a control means for activating a fresh air exchanger unit, gas generator, and fans. Cantagallo et al teach a mobile container device comprising a fresh air exchanger unit (column 12, line 3 to column 13, line 16). Briscoe Jr et al teach a mobile container device comprising a control means for activating a fresh air exchanger, gas generator, and fans (Figure 2, #5; column 8, lines 12-63). It would have been obvious t

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one of ordinary skill in the art to incorporate the fresh air exchanger of Cantagallo et al into the invention of Badalament et al since both are directed to mobile container devices, since Badalament et al already included doors which could exchange fresh air (column 6, line 45), and since the fresh air exchanger of Cantagallo et al can be used without having to manually open the rear doors of Badalament et al, for instance during transport. It would have been obvious to one of ordinary skill in the art to incorporate the controller of Briscoe Jr et al into the invention of Badalament et al, in view of Cantagallo et al, since all are directed to mobile container devices, since Badalament et al already included fans, a gas generator, and rear doors which could exchange fresh air (Figures 2-4, #60, 116; column 6, line 45), since Cantagallo et al already included a fresh air exchanger unit (column 12, line 3 to column 13, line 16), and since the control means of Briscoe Jr et al would have provided improved automatic control of these elements, for instance during transport. Phrases such as "to activate the fans in a given order" are merely preferred methods of using the claimed apparatus.

7. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al, in view of Briscoe Jr et al and Cantagallo et al, as applied above, and further in view of Hearne Jr [Pat. No. 6,202,434].

Badalament et al, Cantagallo et al, and Briscoe Jr et al teach the above mentioned components. Briscoe Jr et al also teach control of automatic drain valves (column 7, line 65; column 8, line 46). Badalament et al, Cantagallo et al, and Briscoe Jr et al do not teach drains in the floor. Hearnes Jr teaches a mobile container device comprising drains in the floor (Figure 1, #114). It would have been obvious to one of ordinary skill in

the art to incorporate the floor drains of Hearne Jr into the invention of Badalament et al, in view of Briscoe Jr et al and Cantagallo et al, since all are directed to mobile container devices, since Badalament et al already included the dripping of water onto the floor (column 8, lines 8-19), and since the floor drains and open reservoir of Hearne Jr (Figure 1, #114 & 117) would have provided a convenient means of containing this water while also preventing the floor and boxes from becoming wet.

Response to Arguments

8. Applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761

Drew Becker
DREW BECKER
PRIMARY EXAMINER
9-27-01